



ATTORNEY GENERAL OF TEXAS  
G R E G   A B B O T T

March 18, 2005

Mr. Kevin Pagan  
Deputy City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505

OR2005-02351

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220426.

The City of McAllen (the "city") received a request for information pertaining to two elected individuals, including traffic tickets, police citations, and fire and health code violations.<sup>1</sup> You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples,

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<sup>1</sup>As you have not submitted a copy of the request, we take our description from your brief.

<sup>2</sup>We understand that the city is seeking clarification of a portion of the request. Accordingly, should the requestor respond to the request for clarification, the city must seek a ruling from this office before withholding any responsive information from him. *See generally* Open Records Decision No. 633 (1999) (providing for tolling of ten-business-day deadline to request attorney general decision while governmental body awaits clarification).

labeled to indicate which exceptions apply to which parts of the documents. You did not submit a copy of the written request for information. Consequently, you failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.108 of the Government Code, which protects law enforcement interests, is a discretionary exception and generally does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 can provide compelling reason under section 552.301). In this instance, you have not provided us with a compelling reason under section 552.108. Therefore, in failing to comply with section 552.301, the department has waived section 552.108. *See* Open Records Decision No. 663 at 5 (1999) (failure to comply with Gov't Code § 552.301 resulted in waiver of discretionary exceptions). Accordingly, you may not withhold the requested information under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can provide a compelling reason for withholding information, we will address your arguments under that exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. In this instance, a request for all police citations pertaining to a named individual is, in essence, a request for the department to compile this individual's criminal history. We note, however, that the submitted records do not identify either of the named individuals as a suspect,

arrestee, or criminal defendant. Accordingly, we find that the submitted records are not part of a compilation of the individuals' criminal history as contemplated by *Reporters Committee*. Thus, the requested information is not protected from disclosure under section 552.101 of the Government Code on this basis.

However, we note that the submitted information includes Texas drivers' license numbers. Section 552.130 excepts from disclosure certain motor vehicle information.<sup>3</sup> Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the city must withhold from disclosure the Texas drivers' license numbers we have marked under section 552.130.

In summary, the city must withhold the information we have marked under section 552.130. The remaining information at issue must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

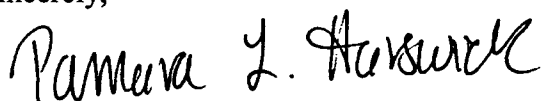
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 220426

Enc. Submitted documents

c: Mrs. Patsy Rogers  
8506 Chivarly  
San Antonio, Texas 78254  
(w/o enclosures)